

**From:** Steve Holden  
**To:** Microsoft ATR  
**Date:** 12/6/01 10:40pm  
**Subject:** Why the Microsoft Settlement Should Be Stronger

## Introduction

I am an independent consultant and trainer with over thirty years in the computer industry. I would argue that the currently proposed settlement of the states' and the DoJ's anti-trust action against Microsoft does not address the inequities which the company's monopolistic behavior has created. Further, it is likely to allow the defendant to extend such behavior into new markets by providing it with the opportunity to dominate the software market in underprivileged and underfunded US schools. Further it will not enable competition in key market areas which Microsoft's illegal actions have so far successfully defended against non-commercial competition of a completely legal nature.

## Complaint (Competition)

The current proposal for settling the Department's anti-trust suit against Microsoft, as well as private settlements proposed by Microsoft in separate class action suits for overpricing, would have Microsoft donate software to the country's poorest schools.

This cannot be considered a punitive action: the marginal cost to Microsoft of an extra copy of any Windows operating system is as close to zero as makes no difference: development costs have already been amortised many hundreds of time over. Further, since such donated software effectively locks the recipients into Microsoft products for their future purchases, it actually increases the marketplace in which Microsoft is free to act in a monopolistic and anti-competitive way.

If the Department sincerely wishes to see Microsoft pay for its illegal behavior then it should insist on remedies which have a measurable effect on the company's net worth. Microsoft should be made to donate the products of other computer industry companies to the schools. Since software to compete with Microsoft products is available at no cost from diverse sources, it would seem more sensible that Microsoft be compelled to donate computer equipment, which could then be provisioned with software chosen by the intended users. The users could choose to provision software at no additional cost using readily-available open source components such as GNU/Linux. Alternatively they might choose to pay for Microsoft software, should they consider it worth the additional cost.

This would also have the advantage that it would create a worthwhile target market for further open source products, against which Microsoft would have to develop new (and hopefully legitimate) forms of

competition.

#### Complaint (Interoperability)

The proposed settlement required Microsoft to provide information to competitors to allow them to interoperate with Microsoft products in far too limited a way. I am particularly concerned that the settlement, as currently proposed, would allow Microsoft to defend the actions they have in the past taken to limit the interoperability of the SAMBA software ([www.samba.org](http://www.samba.org)), which offers a way for open source operating systems to provide file sharing and printing capabilities to computers which run Microsoft desktop operating systems, avoiding lock-in to Windows 2000 or Windows NT for infrastructure support.

A summary of supporting opinion can be seen at

[http://linuxtoday.com/news\\_story.php3?ltsn=2001-11-06-005-20-OP-MS](http://linuxtoday.com/news_story.php3?ltsn=2001-11-06-005-20-OP-MS)

The major problem appears to be that Microsoft would be allowed to determine the interpretation of certain key clauses in the settlement agreement, which would allow them to create loopholes through which they could continue to deny vital interoperability data to legitimate developers of competing (though perhaps non-commercial) products.

#### Summary

Ultimately the only way to change Microsoft's behavior, which despite all their protestations \*has\* been ruled anti-competitive, is to take action which hurts the company (and by extension the stockholders who have profited by its success) in the pocket-book. To do any less it to teach the lesson that anti-trust laws can be ignored with impunity by any 800-pound gorilla that wishes to start making political contributions once it finds itself to be the object of legal action by the DoJ.

Sincerely  
Steve Holden

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